

Today is April 2, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's topic concerns lawsuits filed recently by the Equal Employment Opportunity Commission, or EEOC, alleging disability discrimination under the Americans with Disabilities Act, or ADA.

According to an article written by Troy D. Thompson on HR Hero Line dated February 28, 2014, a review of a significant number of lawsuits filed by the EEOC reveals "the EEOC's current enforcement policies [and] identify common areas of risk under the ADA...." Generally, the ADA requires covered employers to provide a reasonable accommodation to a qualified individual with a disability unless the accommodation would cause an undue hardship for the employer. And, a temporary leave of absence could constitute a reasonable accommodation. A temporary leave of absence that becomes prolonged, however, can present a challenge for employers. Mr. Thompson observed that a number of the lawsuits filed by the EEOC involved "maximum leave policies, full-duty release requirements [and] safety [issues], or unsubstantiated undue hardship issues."

With respect to maximum leave policies, Mr. Thompson noted that "[t]he EEOC views maximum or inflexible leave policies as the equivalent of a refusal to explore or provide reasonable accommodations in violation of the ADA." Some employers have a policy that provides if an employee is unable to return to work after a continuous leave of absence of a specific time, such as 365 days, then the employee will be terminated. According to Mr. Thompson, "[t]he EEOC expects employers to examine each employee's needs on a case-by-case basis...[and] the duty to accommodate is an ongoing obligation that does not automatically end on a date set forth in a policy."

With respect to full-duty release requirements and safety issues, Mr. Thompson stated: "The EEOC objects to employer policies that require employees to be released with no medical restrictions before returning to work. The agency views such policies as evidence of an employer's refusal to engage in the interactive process to explore reasonable accommodations." Similarly, Mr. Thompson indicated that "[t]he EEOC is also challenging employers' decisions to place employees on involuntary medical leaves because of [] safety concerns..." that are only generalized rather than "...a direct threat to the health and safety of themselves or others in the workplace" as permitted by the ADA.

With respect to unsubstantiated undue hardship issues, Mr. Thompson stated that "an undue hardship must be based on an individualized assessment of current circumstances that shows that a specific accommodation would cause significant difficulty or expense. Such determinations should be based on several factors, including:

- The nature and cost of the accommodation;
- The financial resources of the facility making the accommodation;
- The number of workers employed at the facility;
- The effect the accommodation would have on the facility's resources;
- The overall financial resources, number of employees, and size, types, and locations of the employer's facilities;
- The type of operation of the employer, including the structure and functions of the workforce, geographic separateness, and the administrative or fiscal relationship of the facility to the employer; and
- The impact the accommodation would have on the operation of the facility."

Mr. Thompson urged that the EEOC would not simply accept an employer's indication that the accommodation would be an undue hardship.

Because of the complexity of these ADA-related issues, employers would be well-served to seek legal guidance before taking employment actions. If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.